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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 395

UNITED STATES OF AMERICA,

Petitioner,

versus

**M. O. SECKINGER, JR., t/a M. O. SECKINGER
COMPANY,**

Respondent.

PETITION FOR REHEARING

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NOW comes M. O. SECKINGER, and respectfully moves this Honorable Court for a rehearing in the above captioned matter because of the following substantial grounds available to Seckinger and not previously presented in a clear fashion.

I. Porello Reasoning Should Not Be Applied.

Initially, the Porello case, *American Stevedores, Inc., v. Porello*, 330 U. S. 446, (1967) was a case arising in admiralty. Porello was working in the hold of a ship afloat and received all of the benefits of admiralty. This included the inherent and liberal division of responsibility. It was far from a South Carolina land based construction contract.

Next, the clause considered in Porello was born at a time when the United States could be held negligent. This by virtue of the Public Vessels Act.

Thus, an intention to be indemnified could well be present in that contract.

The Porello clause was also a broader clause per se and covered "any service under this schedule." The clause was sixty-two words long versus the twenty-nine words used in the instant clause.

As is usual, the stevedore was in complete control of the ship. He exercised the control far beyond what Seckinger could have exercised at the Marine Base.

Thus, the Porello reasoning developed from an entirely different situation and is not persuasive in this case.

II. The District Court Should Hear Evidence On The Intention Of The Clause.

Even if Porello reasoning is to be followed, a rehearing should be granted on the question of whether evidence could be heard in the District Court on the meaning of the clause.

To state that the intention of the clause is clear would completely ignore the dissent of three distinguished Justices of this Court. They, in short, not only feel that the intention is ambiguous, but they feel that it is entirely different from the intention ascribed to it

by the majority. Nothing could more clearly require examination of intention in the lower court.

Moreover, the Court speaks of "tacit agreement that the background of the clause has been explored as thoroughly as possible."

Seckinger is not aware of such an agreement and should not be foreclosed from relevant testimony. He should have this right as should his opposite contracting parties.

Even if the Court continues to reverse, it should modify and leave this option open to the District Court.

III. The Clause Has Substantial Meaning if Only A Simple Responsibility Clause.

Much weight is given by the majority to the fact that affirmance would drain the clause of any substantial meaning. We would submit that the clause would have great meaning if the Fifth Circuit Court's judgment were left intact.

Since the case was briefed and argued orally, a government contractor, Lockheed Aircraft, has claimed that the government must give it some financial aid. This, because it figured its cost wrong. Lockheed is saying, because of its negligence, the government must be responsible and in some way indemnify it.

Our clause states that "the contractor ... shall be responsible for all damages ... that occur as a result of his fault or negligence ..."

This points up the viability of the clause taken as one of simple responsibility. Its presence probably will protect the taxpayers. Such was its intention.

IV. Only Employee Insulated.

The majority of this Honorable Court also stresses the fact that Seckinger would get out untouched in any and all situations where the government was negligent. This simply does not occur. It might occur to some extent when an employee of Seckinger is injured.

However, if a non-employee were injured, he could file any number of suits against Seckinger, and Seckinger would have to be responsible for damages. This regardless of governmental negligence. Also, in the injured employee situation, Seckinger has paid considerable under the Workmen's Compensation requirements.

V. Clarification of South Carolina Contribution Law Should be Made.

The majority opinion stresses the pertinent South Carolina law is uncertain as to contribution between joint tort feasors.

The dissenting opinion states that contribution does not exist in South Carolina as between joint tort feasors.

Yet the District Court must decide what per cent of the \$45,000.00 each alleged joint tort feasor must contribute.

A rehearing should be granted on the question in order to clear up the direction to the lower court, and

establish the South Carolina contribution law. Or, in the alternative, the District Court should be allowed some guide lines in determining the status of pertinent South Carolina law.

VI. Two Hundred Government Claims are Over-emphasized.

Seckinger has been continually bludgeoned with the casual statement that 200 government suits are pending on this particular clause. An equivalent counter would be that Seckinger would be out of business if he lost this case. Certainly, if either is so important, a rehearing should be granted. Seckinger could then ascertain the nature of these pending cases and in some way prepare himself to defend against the statement. Moreover, if this is as weighty as it appears, the Court should reconsider the effect of the decision on thousands and thousands of contractors who have gone into agreements with the government containing only a simple responsibility clause.

For the foregoing reasons, the decision of the Court should be reconsidered at rehearing.

Respectfully submitted,

KENNEDY AND SOGNIER

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Certification is hereby made that the foregoing is presented in good faith and not for the purpose of delay, and that said petition for rehearing is restricted to the grounds as outlined in Rule 58 of this Court.

This ____ day of March, 1970.

John G. Kennedy

Sworn to and subscribed before
me this ____ day of March, 1970.

Notary Public,
Chatham County, Georgia

STATE OF GEORGIA
CHATHAM COUNTY

CERTIFICATE OF SERVICE

Service of the foregoing Motion for Rehearing has been made as required by depositing sufficient copies thereof properly stamped for air mail postage and properly addressed to opposing counsel of record.

This ____ day of March, 1970.

John G. Kennedy, Attorney
for M. O. Seckinger, Jr., t/a
M. O. Seckinger Company

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